

**Before the
Federal Communications Commission
Washington, D.C. 20054**

In The Matter Of

WC Docket No. 03-11

Application by
Qwest Communications International, Inc.
For Authorization To Provide In-Region,
InterLATA Services in the States of New
Mexico, Oregon and South Dakota

**COMMENTS OF THE CITY OF PORTLAND, OREGON, REGARDING
QWEST COMMUNICATIONS INC.'S APPLICATION FOR AUTHORITY
TO PROVIDE IN-REGION, INTERLATA SERVICES IN OREGON**

The City of Portland ("City") respectfully submits that the Federal Communications Commission ("Commission") should reject Qwest Communications International's ("Qwest") application for Section 271 authority to offer in-region, interLATA services in Oregon. As explained below, Qwest's current application fails to demonstrate compliance with the "Competitive Checklist" requirements delineated in Section 271 of the Federal Telecommunications Act of 1996 ("Telecom Act"). Specifically, Qwest's application fails to comply with checklist items 1, 2, 4 and 5, because Qwest completely refuses to provide the City with *any* access to Qwest's network, despite the existence of an Oregon Public Utility Commission ("OPUC")-approved interconnection agreement between the City and Qwest. Qwest refers to this interconnection agreement as providing support for its Section 271 application; in fact, the City contends that Qwest has refused to honor the terms of this agreement and is not providing services to the City as required under its contract.

I. Background

Over the past several years, the City has developed a telecommunications network known as the Integrated Regional Network Enterprise ("IRNE"). The City developed the IRNE network with the intent of being a competitive telecommunications carrier offering service on an

indiscriminate basis to all governmental and educational entities in Portland and other nearby communities. In that regard, the City has sought and obtained authorization from the OPUC to act as a competitive local exchange carrier (“CLEC”) capable of providing local exchange services. *See OPUC Order No. 01-609* (Docket CP 943, July 26, 2001). The City’s CLEC certification expressly states that the City is entitled to interconnect with other telecommunications carriers and purchase unbundled network elements (“UNEs”), trunking and other interconnection products and services.¹ Nevertheless, Qwest currently refuses to allow the City *any* access to Qwest’s local exchange network.

At present, the City provides high-speed data telecommunications services to several governmental and educational entities that are either directly connected to the City’s fiber backbone or accessible through facilities obtained from carriers other than Qwest. Examples of entities to which the City currently provides telecommunications services include City administrative and public safety facilities as well as certain locations of the Portland Public School District, the Multnomah Education Service District, Multnomah County, the City of Gresham, Oregon and the State of Oregon Department of Administrative Services. In addition to the entities the City is currently serving, numerous other governmental and educational entities have executed or are in the process of executing standard-form contracts indicating their desire to receive telecommunications services from the City. Such entities include Portland Community College, Portland State University, METRO Regional Government, the City of Hillsboro and the City of Beaverton. The City will begin providing service to these entities, as well as providing voice and expanded data services to its current customers, as soon as it is able to fully interconnect with Qwest and gain fair access to the public switched network.

¹ The City’s Certificate of Authority issued by the PUC designates that the City has met the requirements for classification as a CLEC. Further, the PUC granted the City authority to “purchase unbundled network elements (UNEs) as well as finished services from other certified carriers.”

Qwest has refused to honor its obligations under the interconnection agreement, arguing that it may withhold *all* access to the local exchange network on the grounds that the City is not allowed to serve both its own agencies and those of third parties. Qwest was, however, fully aware of the City's intended customer base at the time it *voluntarily* negotiated and entered into an interconnection agreement with the City. Specifically, as part of the City's preparation to offer telecommunications services, in the summer of 2002 the City issued a request for proposal ("RFP") for network services. The RFP clearly described, in both written and schematic form, exactly how the City intended to operate the IRNE network. Specifically, the RFP clearly laid out, in straight forward, non-technical language, that the City intended to use the IRNE network to serve locations associated with City operations as well as locations associated with other independent governmental and educational entities.

In the fall of 2002 Qwest responded to the RFP. After acknowledging that it had read the RFP and understood the scope of the City's telecommunications venture, Qwest proposed that the City directly interconnect with Qwest and purchase unbundled network elements and discounted retail services for resale in order to meet the City's network requirements. As a condition of such interconnection, however, Qwest insisted that the City execute a formal interconnection agreement. The City accepted Qwest's offer and the parties subsequently negotiated an interconnection agreement ("Agreement") derived almost entirely from Qwest's contemporaneous Statement of Generally Available Terms ("SGAT"). On January 16, 2002, the parties submitted the Agreement to the OPUC for approval. On or about February 12, 2002, the OPUC approved the Agreement without exceptions or conditions. *See OPUC Order No. 02-093* (Docket ARB 398. Feb. 12, 2002).

Despite the OPUC's approval of the Agreement, Qwest has refused to perform its obligations under the Agreement. The City placed orders for UNE Local Loops and LIS Trunks, both of which are clearly available under the Agreement. Qwest rejected the City's orders,

however, objecting to the City's proposed use of the facilities to serve both City facilities and third-party locations. Qwest made this objection despite *never* raising it during the City's CLEC application proceeding, Qwest's response to the City's RFP, the parties' negotiation of the Agreement or the OPUC proceeding to approve the Agreement. The City believes that Qwest's actions constitute a material breach of the Agreement and are in violation of Qwest's obligations under the Telecom Act and Oregon state law. Pursuant to the dispute resolution provisions of the Agreement, on June 3, 2002, the City initiated an arbitration proceeding before the American Arbitration Association to enforce its rights under the Agreement and the law. That proceeding is currently scheduled for hearing in late April, 2003, over a year after the City first ordered services under the Agreement.

As of the date of these comments, Qwest continues to refuse the City nondiscriminatory access to Qwest's network. Consequently, Qwest has completely stifled the City's ability to compete as a CLEC and provide service to governmental and educational entities that have determined they would prefer service from the City via its IRNE network..

II. By Refusing to Interconnect With The City, Qwest Has Failed to Comply With Checklist Item 1

Checklist item number 1, 47 U.S.C. § 271(c)(2)(B)(i), requires Qwest to comply with the interconnection requirements of sections 251(c)(2) and 252(d)(1) of the Telecom Act as implemented by the Commission. Section 251(c)(2)(D) requires incumbent local exchange carriers ("ILECs") such as Qwest to:

provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

As part of Qwest's 271 application submitted to the Commission, Qwest cites various interconnection agreements in demonstration of its *purported* compliance with checklist item 1.

Qwest even refers to the Agreement with the City in support of its alleged compliance with checklist item 1. (*See Application by Qwest Communications International, Inc. for Provision of In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, Appendix L, at Tab 25 (Submitted: January 15, 2003)). Qwest apparently is willing to cite its Agreement with the City when it benefits Qwest's business goals (*i.e.*, its application seeking long-distance authority). Qwest refuses to acknowledge the validity of the Agreement, however, when it comes to actually providing the City with appropriate products and services.

At present, the City is unable to directly transmit or route any telephone exchange service to Qwest's network. Consequently, Qwest has rendered the City's interconnection agreement a virtual nullity. By refusing to permit the City to interconnect with Qwest's network, the City contends that Qwest has failed to comply with its duties under checklist item 1 and, therefore, has not satisfied the requirements necessary to receive Commission approval to offer long-distance services. To the extent that Qwest has cited to the Agreement in support of its application, Qwest has misled the Commission in regard to Qwest's actual practices.

III. By Refusing the City Nondiscriminatory Access to Unbundled Network Elements, Qwest Has Failed to Comply With Checklist Item 2

Qwest has failed to provide the City nondiscriminatory access to network elements on an unbundled basis. Checklist item number 2, 47 U.S.C. § 271(c)(2)(B)(ii), requires Qwest to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of this title." Section 251(c)(3) provides in pertinent part that ILECs, such as Qwest, shall:

Provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

Despite these statutory requirements, not to mention Qwest's contractual obligations under the Agreement, Qwest has refused to provide any UNEs for the City. Instead, Qwest has determined that the City is not a telecommunications carrier and is not providing telecommunications services. Qwest's unilateral determination completely ignores the fact that the City has been designated as a CLEC by the OPUC and that the City actually provides competitive services to the greatest extent it can without access to the public switched network controlled by Qwest.² Until Qwest satisfies its obligations to provide UNEs to the City, Qwest's application does not comply with checklist item 2.

Qwest claims that the City is not a competitive provider because it is only providing services to itself. To the extent that the City has executed contracts to provide services to other government and educational bodies, it cannot perform under those contracts until Qwest honors its interconnection agreement. The City contends that, by doing so, Qwest violates checklist item 2.

IV. By Refusing to Provide the City With Local Loops, Qwest Has Failed to Comply With Checklist Item 4

Qwest has failed to provide the City non-discriminatory access to local loop transmission on an unbundled basis. Checklist item number 4, 47 U.S.C. § 271(c)(2)(B)(iv), requires Qwest to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." Pursuant to Section 9.2 and Exhibit A of the Agreement, the City properly ordered such unbundled local loops; these were among the orders expressly rejected by Qwest. By rejecting the City's local loop orders, the City contends that Qwest has violated its obligations under Section 271 and the Commission should, therefore, reject Qwest's application seeking long-distance authority.

² As described above, the City provides limited services to customer locations that are directly connected to the IRNE fiber backbone or accessible through use of facilities obtained from carriers other than Qwest. When Qwest begins complying with the terms of the Agreement, the City will expand its current offerings to include switched voice service, and will expand its customer base by serving remote locations not directly connected to the IRNE backbone.

V. By Failing to Provide the City With Unbundled Local Transport, Qwest Has Failed to Comply with Checklist item 5

Qwest has failed to provide the City with unbundled local transport. Checklist item number 5, 47 U.S.C. § 271(c)(2)(B)(v), requires Qwest to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other service.” As described above, the City is a facilities-based telecommunications carrier that owns and operates its own carrier-grade voice switch. Pursuant to the Agreement, the City ordered Qwest trunks to transport the City’s voice traffic between the City’s switch and the public network. Qwest rejected these orders. Accordingly, Qwest has impaired the City’s ability to provide competitive switched voice services and essentially rendered the City’s switch useless. Without direct access to the public switched network, the City’s network infrastructure is little more than an isolated “island.” The City contends that Qwest’s decision to deny the City access to local transport violates Qwest’s obligations under Section 271 and should prevent Qwest from obtaining Commission approval for its 271 application.

VI. Conclusion

The City acknowledges that the Commission’s function in this proceeding is not to resolve every dispute in which Qwest may be involved. The City is not asking that the Commission make a determination in regard to its disagreement with Qwest – that is the purpose of the on-going arbitration proceeding between the City and Qwest. The City brings this matter to the Commission’s attention in response to Qwest’s reference to the Agreement in its application as support for the proposition that its local network is open and accessible to competitors. The City contends that Qwest’s reference to the Agreement is misleading. By presuming that it is the arbiter of who is a telecommunications carrier and who is not, and then exercising a *de facto* veto power over the City’s ability to offer a full compliment of competitive telecommunications services, Qwest has ignored the fundamental purpose (and provisions) of the Telecom Act—to encourage competition. For the foregoing reasons, the City respectfully

submits that the Commission should reject Qwest's current application to provide in-region, interLATA service in Oregon.

Respectfully submitted,

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